

Article - Environment

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§5-909.

(a) An applicant shall take all necessary steps to first avoid significant impairment and then minimize losses of nontidal wetlands. If the applicant demonstrates to the Department's satisfaction that all necessary steps were taken and losses or significant impairment of nontidal wetlands are unavoidable, the Department shall require the applicant to adopt mitigation practices.

(b) (1) By December 31, 1989 the Department, consistent with the goals established in § 5-902 of this subtitle, shall adopt by regulation standards and procedures for the mitigation of nontidal wetlands losses, including practices for nontidal wetland creation, restoration, enhancement, or monetary compensation.

(2) The Department may accept monetary compensation only if it is determined that creation, restoration, or enhancement of nontidal wetlands are not feasible alternatives. Monetary compensation may not be a substitute for the requirement to avoid and minimize nontidal wetland losses.

(c) (1) There is a Nontidal Wetland Compensation Fund in the Department.

(2) The following money shall be deposited in the Fund:

(i) Any monetary compensation paid by an applicant instead of engaging in the creation, restoration, or enhancement of a nontidal wetland; and

(ii) Any civil or criminal penalty imposed by a court in accordance with § 5-911 of this subtitle.

(3) Funds in the Nontidal Wetland Compensation Fund may be used only for the creation, restoration, or enhancement of nontidal wetlands, including:

(i) Acquisition of land;

(ii) Acquisition of easements;

(iii) Maintenance of mitigation sites;

(iv) Purchase of credits in mitigation banks; and

(v) Contractual services necessary to accomplish the intent of this paragraph.

(4) Funds credited and any interest accrued to the Fund:

(i) Shall remain available until expended; and

(ii) May not be reverted to the General Fund under any other provision of law.

(5) At the end of the fiscal year, the Department shall prepare an annual report on the Nontidal Wetland Compensation Fund that includes an accounting of all financial receipts and expenditures to and from the Fund and shall provide a copy of the report to the General Assembly, as provided under § 2-1246 of the State Government Article.

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